

April 13, 2006

**AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2006-12 is available for public comments under this procedure. It was requested by, Laurence E. Gold, Esq., and Michael B. Trister, Esq. on behalf of The International Association of Machinists and Aerospace Workers ("IAM") and the Transportation Communications International Union/IAM ("TCU/IAM").

Proposed Advisory Opinion 2006-12 is scheduled to be on the Commission's agenda for its public meeting of Thursday, April 20, 2006.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern Time) on April 19, 2006.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

### **CONTACTS**

Press inquiries: Robert Biersack (202) 694-1220

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Other inquiries:

To obtain copies of documents related to AO 2006-12, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

### **MAILING ADDRESSES**

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

April 13, 2006

**MEMORANDUM**

TO: The Commission

THROUGH: Robert J. Costa  
Acting Staff Director

FROM: Lawrence H. Norton  
General Counsel

James A. Kahl  
Deputy General Counsel

Rosemary C. Smith  
Associate General Counsel

Brad C. Deutsch  
Assistant General Counsel

Cheryl Hemsley  
Attorney

Subject: Draft AO 2006-12

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 20, 2006.

Attachment

1 ADVISORY OPINION 2006-12

2  
3 Laurence E. Gold, Esq.

4 Michael B. Trister, Esq.

5 Lichtman, Trister & Ross, PLLC

DRAFT

6 1666 Connecticut Avenue, N.W., Fifth Floor

7 Washington, D.C. 20009

8  
9 Dear Messrs. Gold and Trister:

10  
11 We are responding to your advisory opinion request on behalf of the International  
12 Association of Machinists and Aerospace Workers (“IAM”) and the Transportation  
13 Communications International Union/IAM (“TCU/IAM”) regarding whether, under the  
14 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission  
15 regulations, IAM and TCU/IAM are affiliated during the current transition period  
16 pending a full merger of IAM and the Transportation Communications International  
17 Union (“TCU”).<sup>1</sup> If IAM and TCU/IAM *are* affiliated, you also ask a number of  
18 questions regarding their contributions, solicitations, and separate segregated funds  
19 (“SSFs”).

20 The Commission concludes that, under the Act and Commission regulations, IAM  
21 and TCU/IAM are affiliated labor organizations during this transition period of the  
22 pending full merger between IAM and TCU. As such, IAM’s SSF, the Machinists Non-  
23 Partisan Political league (“MNPL”), and TCU/IAM’s SSF, the Responsible Citizens  
24 Political League, a Project of the Transportation Communications International Union  
25 (“RCPL”), must aggregate any contributions made or received by either SSF. Further,  
26 because IAM and TCU/IAM are affiliated, IAM, TCU/IAM and their SSFs may  
27 undertake all of the activities described in your request.

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<sup>1</sup> TCU/IAM is the organization resulting from a July 6, 2005, Merger Agreement between IAM and TCU.

1    ***Background***

2           The facts presented in this advisory opinion are based on your letters received on  
3   February 14 and March 2, 2006, and the attachments thereto.

4    1.     ***IAM***

5           IAM is a labor organization as defined in the Act and Commission regulations.  
6   2 U.S.C. 441b(b)(1); 11 CFR 100.134(b). IAM has 400,000 active members who work  
7   throughout the United States in many industries, with significant concentrations in the  
8   transportation, aerospace, forest products and automotive industries, and in government.  
9   IAM is organized in an integrated hierarchical structure, governed by an Executive  
10   Council. Its affiliates are assigned to four geographic territories, plus a nationwide  
11   Transportation territory that reflects the size and national focus of that occupational  
12   sector. Within the territories, IAM includes 62 intermediate district lodges comprised of  
13   representatives elected by local lodges. IAM has more than 1,200 local lodges whose  
14   officers are elected by the members they serve.

15          IAM established MNPL in 1947. MNPL is an SSF registered with the  
16   Commission. MNPL and IAM solicit contributions to MNPL from IAM members and  
17   their household family members. IAM solicits these contributions through various means  
18   including its national member magazine, *IAM Journal*.

19   2.     ***TCU***

20          Prior to the current transition period pending a full merger between IAM and  
21   TCU, TCU was a labor organization as defined in the Act and Commission regulations.  
22   2 U.S.C. 441b(b)(1); 11 CFR 100.134(b). TCU had approximately 46,000 members  
23   actively employed primarily in the railroad industry. TCU's highest governing board was

1 its Executive Council with 13 intermediate boards and 254 districts and lodges (or locals)  
2 throughout the United States.

3 TCU established RCPL in 1972. RCPL is an SSF registered with the  
4 Commission. TCU and RCPL solicited contributions to RCPL from TCU members using  
5 various means including the TCU member magazine, *Interchange*.

6 3. *Merger of IAM and TCU*

7 On July 6, 2005, IAM and TCU entered into an agreement (“Merger Agreement”)  
8 committing IAM and TCU to a “full merger.” IAM and TCU also signed two side letters  
9 pertaining to the Merger Agreement. The merger is to be accomplished in two phases:  
10 (1) a “transition period” lasting until January 1, 2012, at the latest,<sup>2</sup> and (2) a completed  
11 “full merger.” The Merger Agreement does not permit either labor organization to  
12 unilaterally terminate or change the agreement and resulting relationship. Therefore,  
13 absent mutual agreement, completion of the full merger is a certainty.

14 Pursuant to the Merger Agreement, IAM and TCU/IAM have already undertaken  
15 the following actions:

- 16 1) IAM has chartered TCU/IAM as a new “affiliate.” IAM now expects to create  
17 a “Rail Division” composed of TCU/IAM and a pre-existing IAM district that  
18 engages in collective bargaining in the railroad industry. The Rail Division  
19 will operate as part of IAM’s Transportation Territory.

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<sup>2</sup> TCU/IAM may accelerate the full merger upon consultation with the IAM International President if TCU/IAM finds it advantageous to do so.

- 1           2) Effective August 1, 2005, TCU/IAM pays IAM a monthly per capita tax of
- 2                 \$7.00/member.<sup>3</sup>
- 3           3) IAM and TCU/IAM have embarked on a process of integrating their
- 4                 governance, ending with voting rights in IAM for TCU/IAM's members upon
- 5                 full merger.
- 6           4) An Integration Team has begun work to integrate the two labor organizations'
- 7                 operations and resources.
- 8           5) IAM and TCU/IAM have undertaken a combined communications program,
- 9                 including the merger of their two member publications. The resulting
- 10                publication, sent to all members of IAM and all members of TCU/IAM, is a
- 11                magazine containing at least two pages of TCU/IAM news.
- 12           6) IAM and TCU/IAM have merged the TCU Staff Retirement Plan with the
- 13                IAM Grand Lodge Pension Plan.

#### 14   *Questions Presented*

- 15   1.       *Are IAM and TCU/IAM affiliated for purposes of the Act during the current*
- 16             *transition period pending a full merger between IAM and TCU?*
- 17   2.       *If IAM and TCU/IAM are affiliated, (a) must MNPL and RCPL aggregate*
- 18             *contributions made and received by the two SSFs for purposes of the Act's limits;*
- 19             *(b) may IAM pay the administration and solicitation costs for RCPL; (c) may IAM*
- 20             *and MNPL solicit contributions to MNPL from TCU/IAM's restricted class, and*

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<sup>3</sup> For the months of August to December 2005, the combined per capita tax amounted to nearly \$1.5 million. It is estimated that such per capita tax payments by TCU/IAM to IAM will reach \$3.86 million for 2006. On January 1 of each year, through 2011, the per capita tax will increase to a rate of the previous year's per capita plus an annual IAM Grand Lodge increase/per member. In 2012, the per capita tax will be equal to the full IAM Grand Lodge per capita tax.

1        *may TCU/IAM and RCPL solicit contributions to RCPL from IAM's restricted*  
2        *class; (d) may IAM and TCU/IAM pay for communications to each other's*  
3        *restricted classes where the communications expressly advocate the election or*  
4        *defeat of a clearly identified candidate; and (e) may MNPL and RCPL be merged*  
5        *into a single SSF?*

6        ***Legal Analysis and Conclusions***

7        *Question 1. Are IAM and TCU/IAM affiliated for purposes of the Act during the*  
8        *current transition period pending a full merger between IAM and TCU?*

9        Yes, IAM and TCU/IAM are affiliated labor organizations for purposes of the Act  
10       and Commission regulations during the current transition period.

11       Under the Act and Commission regulations, political committees, including SSFs,  
12       that are established, financed, maintained or controlled by the same corporation, labor  
13       organization, person or group of persons, including any parent, subsidiary, branch,  
14       division, department or local unit thereof, are affiliated. 2 U.S.C. 441a(a)(5); 11 CFR  
15       100.5(g)(2) and 110.3(a)(1)(ii). Political committees' sponsoring organizations are also  
16       considered to be affiliated with each other when such organizations are established,  
17       financed, maintained or controlled by the same corporation, labor organization, person, or  
18       group of persons. 11 CFR 100.5(g)(4) and 110.3(a)(3).

19       In the absence of *per se* affiliation set out at 11 CFR 100.5(g)(3), the factors set  
20       forth at 11 CFR 100.5(g)(4) are used to determine affiliation between political  
21       committees or between their sponsoring organizations.<sup>4</sup> *See also* 11 CFR 110.3(a)(3).

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<sup>4</sup> The same factors are also used to determine affiliation between two SSFs, or between a sponsoring organization and the SSF of another organization. 11 CFR 110.3(a)(3)(i).



1 These factors – which pertain to the relationship between sponsoring organizations as to  
2 governance; common officers, employees, or members; financing; and the formation of  
3 the organizations – are to be examined in the context of the overall relationship between  
4 the sponsoring organizations. 11 CFR 100.5(g)(4) and 110.3(a)(3).

5 In this instance, the Merger Agreement itself and the actions taken by IAM and  
6 TCU (now TCU/IAM) during the transition period, demonstrate a formal and ongoing  
7 relationship between the two organizations. For example, IAM played a significant role  
8 in the formation of TCU/IAM by chartering TCU/IAM, effectively folding the former  
9 TCU into its hierarchical structure. 11 CFR 100.5(g)(4)(ii)(I). Additionally, the  
10 significant monthly per capita tax that TCU/IAM currently pays to IAM is strong  
11 evidence that the two organizations are affiliated. 11 CFR 100.5(g)(4)(ii)(G) and (H).

12 Further, IAM and TCU/IAM have overlapping employees, including TCU/IAM  
13 employees who are now shared with IAM. 11 CFR 100.5(g)(4)(ii)(E). Additionally,  
14 IAM has hired some former TCU employees to further the integration of the two  
15 organizations. 11 CFR 100.5(g)(4)(ii)(F).

16 Therefore, the Commission concludes that IAM and TCU/IAM are currently  
17 affiliated for purposes of the Act and Commission regulations.

18 *Question 2. Activities of Affiliated Entities.*

19 If IAM and TCU/IAM are affiliated, you also ask a number of questions regarding  
20 their contributions, solicitations, and SSFs; all of which are typical actions undertaken by  
21 affiliated entities.

1     (a)     *Must MNPL and RCPL aggregate contributions made and received by the two*  
2     *SSFs for purposes of the Act's limits?*

3             Yes, because IAM and TCU/IAM are affiliated entities, their SSFs (MNPL and  
4     RCPL, respectively) must share contribution limits under the Act and Commission  
5     regulations. 2 U.S.C. 441a(a)(5); 11 CFR 110.3(a)(1).

6     (b)     *May IAM pay the administration and solicitation costs for RCPL?*

7             Yes. A labor organization is permitted to use its general treasury funds to pay for  
8     the costs of establishing, administering, and soliciting contributions to its SSF. 2 U.S.C.  
9     441b(b)(2)(C); 11 CFR 114.5(b). Additionally, the payment of such expenses is  
10    explicitly excepted from the Act's definitions of "contributions" and "expenditures."  
11    2 U.S.C. 431(8)(B)(vi) and (9)(B)(v). Accordingly, because IAM and TCU/IAM are  
12    affiliated, IAM may pay RCPL's administration and solicitation costs. Cf. Advisory  
13    Opinion 2001-7 (Nuclear Management Company Political Action Committee).

14    (c)     *May IAM and MNPL solicit contributions to MNPL from TCU/IAM's restricted*  
15    *class, and may TCU/IAM and RCPL solicit contributions to RCPL from IAM's restricted*  
16    *class?*

17             Yes. The Act and Commission regulations permit a labor organization to solicit  
18    contributions to the labor organization's SSF from its members and executive or  
19    administrative personnel, and their families. 2 U.S.C. 441b(b)(4)(A); 11 CFR 114.1(j)  
20    and 114.5(g)(2). Accordingly, because IAM and TCU/IAM are affiliated labor  
21    organizations, IAM and MNPL may solicit contributions to MNPL from TCU/IAM's  
22    restricted class, and TCU/IAM and RCPL may solicit contributions to RCPL from IAM's

1 restricted class. *Cf.* 11 CFR 114.5(g)(1) (corporations permitted to solicit the restricted  
2 classes of affiliated entities); *see also* Advisory Opinion 2001-18 (BellSouth).

3 (d) *May IAM and TCU/IAM pay for communications to each other's restricted*  
4 *classes where the communications expressly advocate the election or defeat of a clearly*  
5 *identified candidate?*

6 Yes. The Act and Commission regulations permit a labor organization to pay for  
7 express advocacy communications to its restricted class. 2 U.S.C. 441b(b)(2)(A);  
8 11 CFR 114.3. Accordingly, because IAM and TCU/IAM are affiliated labor  
9 organizations, each may pay for express advocacy communications to the restricted  
10 classes of both organizations. *Cf.* Advisory Opinion 1993-18 (Southwestern Bell  
11 Corporation) at note 3.

12 (e) *May MNPL and RCPL be merged into a single SSF?*

13 Yes, MNPL and RCPL may be merged into one SSF because they are treated as  
14 one political committee for purposes of limits on contributions they make or receive  
15 under 2 U.S.C. 441a(a)(5) and 11 CFR 110.3(a)(1), and because they may transfer funds  
16 to one another that are not limited in amount. 2 U.S.C. 441a(a)(5)(C); 11 CFR 102.6(a)  
17 and 110.3(c)(1).

18 This response constitutes an advisory opinion concerning the application of the  
19 Act and Commission regulations to the specific transaction or activity set forth in your  
20 request. *See* 2 U.S.C. 437f. The Commission emphasizes that if there is a change in any  
21

1 of the facts or assumptions presented, and such facts or assumptions are material to a  
2 conclusion presented in this advisory opinion, then the requestor may not rely on that  
3 conclusion as support for its proposed activity.

4

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Sincerely,

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Michael E. Toner  
Chairman

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12 Enclosures (AOs 2001-18, 2001-7 and 1993-18)